

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**AJW, BY AND THROUGH HER NEXT
FRIEND, NATASHA HUDSON,**

Plaintiff,

v.

**ELYSIAN FIELDS INDEPENDENT
SCHOOL DISTRICT,**

Defendant.

Civil Case No.: 2:20-cv-294

JURY

ORIGINAL COMPLAINT

COMES NOW A.J.W., a female child, by and through her next friend, Natasha Hudson, Plaintiff (or AJW), complaining of Elysian Fields Independent School District, Defendant (or EFISD), and respectfully shows the Court:

PARTIES & JURISDICTION

Plaintiff is a female child, resident of Panola County, Texas.

Defendant is a school district organized under the laws of the State of Texas.

Because Defendant receives federal financial assistance, Plaintiff invokes the jurisdiction of this Court pursuant to Title IX of the Higher Education Amendments of 1972 (Public Law No. 92-318, 86 Stat. 235), 20 U.S.C. § 1681 et seq., (Title IX). Plaintiff invokes the original jurisdiction of this court pursuant to 28 U.S.C. § 1331.

Venue in this Court is proper under 28 U.S.C. § 1391 as the events giving rise to this Complaint occurred within the Eastern District of Texas.

1 The Defendant in this case has consented to waive service of summons, accordingly,
2 Plaintiff will transmit a copy of this Complaint along with a waiver of service of summons to
3 Defendant after this action has been assigned a case number by the Court.

4 **FACTS**

5 At all times giving rise to this Complaint, AJW, a minor, was a student at Elysian
6 Fields Elementary school, a school operated under the governance of Defendant.

7 AJW was enrolled in Pre-Kindergarten at Elysian Fields Elementary School during
8 the 2019-2020 school year.

9 At all times giving rise to this Complaint TLC, a minor, was a student at Elysian
10 Fields High School, a school operated under the governance of Defendant.

11 TLC was in 12th grade at Elysian Fields High School during the 2019-2020 school
12 year.

13 At all times giving rise to this Complaint AJW was four years old, and TLC was
14 seventeen years old.

15 AJW and TLC sat in assigned seats on EFISD school bus number 214 during the
16 2019-2020 school year.

17 AJW's assigned seat was in the front row, on the driver's side, directly behind the bus
18 driver. TLC's assigned seat was in the front row, on the passenger's side, directly across the
19 aisle from AJW's seat.

20 The EFISD's Transportation Disciplinary Policies and Procedures ("EFISD TDPP"),
21 attached as Exhibit A, outlines the policies and procedures for establishing a bus seating
22 chart, as well as the rules and regulations students are to follow while riding the bus and
23 policies and procedures for disciplining students who fail to follow the EFISD TDPP rules.

24 The EFISD TDPP requires that "Students shall have assigned seating based on age
25 groups." In addition, "[t]he appropriate campus principal or designee will be responsible for
26 any disciplinary actions concerning infractions occurring in any district vehicles," and "[a]s
27

1 the campus principals deem necessary they may require additional actions to ensure student
2 behavior is corrected.”

3 The driver for bus 214, Desirea Smith, stated in an interview with police concerning
4 the incident made the basis of this Complaint that TLC had a history of disobeying her
5 instructions and not staying in his seat. Further, EFISD’s scholastic records reveal TLC had a
6 history of behavioral issues at school for which he faced disciplinary action before the
7 incident made the basis of this Complaint.

8 During the 2018-2019 school year, TLC looked up inappropriate content on a school
9 computer. School officials caught him, and they placed TLC in In-School Suspension.

10 In addition, prior to the incident made the basis of this Complaint, Defendant knew
11 that TLC had previously been charged and convicted for unauthorized use of a vehicle, a
12 crime committed in September 2018; he had been charged and convicted for criminal
13 mischief, a crime also committed in September 2018; and he had been charged with
14 burglary of a habitation, a crime also committed in September of 2018, which resulted in a
15 plea bargain placing him on deferred adjudication.

16 In addition, TLC had been diagnosed with a number of intellectual disabilities,
17 including autism and ADHD.

18 EFISD implemented a defined Individual Educational Program (IEP) for TLC as a
19 result of TLC’s intellectual disabilities which required a number of special services to be
20 provided. TLC’s IEP required clearly defined, consistent limits, defined physical space, and
21 frequent reminders of the rules, among other things.

22 On information and belief, as a result of his IEP, as well as his history of behavioral
23 problems and, more specifically, problems following bus rules, EFISD assigned TLC a seat at
24 the front of the bus in order to provide proper supervision to TLC.

25 On the afternoon of September 3, 2019, AJW and TLC were on bus 214, seated in
26 their assigned seats, returning home from school.

1 While the bus was returning students to their homes, TLC left his seat multiple times.
2 Each time he crossed the aisle and sat down next to AJW, in her seat behind the driver.

3 When he did this, TLC exposed his penis to AJW, physically moved her hands to
4 touch his penis, and forced her head down toward his crotch so that her mouth touched his
5 penis.

6 TLC touched AJW sex organs, and, at least once, brought the fingers he used to touch
7 AJW's sex organs to his nose to smell. He also placed his face in her pelvic area on at least
8 one occasion.

9 When the bus arrived at her stop, AJW descended the bus in tears and made an
10 immediate outcry to her mother, Natasha Hudson, about the sexual assault that had
11 occurred. Ms. Hudson contacted the police.

12 On September 4, 2019, TLC was arrested on three (3) felony counts: Aggravated
13 sexual assault, indecency with a child—sexual contact, and indecency with a child—
14 exposure.

15 CAUSE OF ACTION

16 DISCRIMINATION ON THE BASIS OF GENDER IN VIOLATION OF 17 20 USC 1681 (TITLE IX)

18 Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

19 EFISD, at all times relevant to this Complaint, had actual knowledge of TLC's
20 propensity to engage in inappropriate sexual conduct, including the sexual harassment of
21 female students, such as AJW.

22 At the time of the incident made the basis of the Complaint, TLC was under EFISD's
23 control and supervision; EFISD exercised substantial control at the time of the harassment
24 over TLC, and over the context in which TLC's harassment of AJW occurred.

25 AJW suffered harassment and injury based on her sex.
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1 The harassment AJW suffered was so severe, pervasive, and/or objectively offensive
2 that it effectively barred, and continues to function as a bar to, her access to an educational
3 opportunity or benefit.

4 In so far as EFISD failed to enact and/or disseminate and/or implement proper or
5 adequate procedures to discover, prohibit, or remedy the kind of harassment and injury
6 Plaintiff suffered, EFISD was deliberately indifferent to TLC's actions.

7 This failure included, without limitation, non-existent or inadequate customs,
8 policies or procedures for the recognition, reporting, investigation, and correction of
9 unlawful sex-based discrimination, and the failure to properly provide supervision for
10 impaired students such as perpetrator.

11 EFISD's failures amounted to deliberate indifference towards the unlawful sexual
12 conduct that had occurred, was occurring, or was likely to occur.

13 As a result, Plaintiff was subject to the loss of educational opportunity, and suffered
14 injury.

15 Prior to the sexual assault of Plaintiff by perpetrator, EFISD had actual knowledge
16 perpetrator had engaged in misconduct that was sexual in character.

17 EFISD demonstrated a policy and practice of failing to adequately supervise students
18 with a history of inappropriate behavior and sexual misconduct; failing to report sexual
19 misconduct to law enforcement; engaging in ad hoc internal disciplinary procedures that
20 resulted in a lack of discipline for students like perpetrator who had engaged in sexual
21 misconduct; tolerating sexual misconduct committed by students; creating an atmosphere
22 whereby the rules applicable to all students did not apply to perpetrator.

23 EFISD acted with deliberate indifference to the known vulnerability of AJW in light
24 of its knowledge of the danger posed by TLC, thereby acting clearly unreasonably in
25 response to this knowledge.
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1 As a result of EFISD's deliberate indifference Plaintiff endured a sexual assault and
2 suffered loss of educational opportunities and/or benefits. Plaintiff has incurred, and will
3 continue to incur, attorney's fees and costs of litigation.

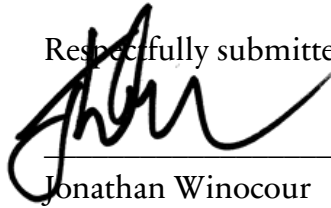
4 **RELIEF REQUESTED**

5 WHEREFORE Plaintiff prays for all damages available to her under law, including entry of a
6 monetary judgment sufficient to compensate her for the injuries cause by Defendant;
7 punitive damages if applicable; costs; pre and post judgment interest as allowed by law; any
8 applicable statutory civil penalties according to law; attorney's fees and costs of litigation,
9 pursuant to 42 U.S.C. § 1988 or other applicable law; and such other and further relief as the
10 court deems appropriate and just.

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12 **PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL HER CLAIMS**

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27 Dated: September 3, 2020

Respectfully submitted,



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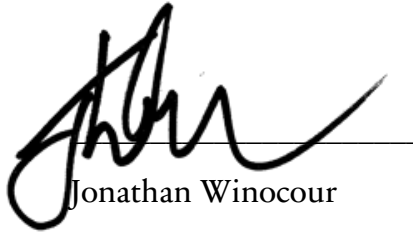
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 3, 2020 a true and correct copy of the foregoing, and any accompanying exhibits was served on Clay Grover, Esq. via electronic mail to cgrover@rmgllp.com pursuant to his prior agreement to accept service on behalf of the Defendant in this action.



Jonathan Winocour